IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.1779 of 2014
and
M.P.No.1 of 2014

M/s. United India Insurance Co. Ltd.,
Branch at Ambur
No.11/A, M.C.Road
Ambur Town,
Vellore District ...Appellant/1st Respondent

vs.

1.Asma Parveen
2. Minor Thanveer
3. Minor Hazeera
4. Minor Akifa Parveen ..Respondents 1 to 4/ Petitioners 1-4

5. M/s Oriental Insurance Co. Ltd.,
Door No.12, Katpadi Road
Gudiyatham, 632 602
Vellore District.
(Minors 2, 3 and 4 are represented
by their next friend mother,
the first petitioner).

... 5th Respondent/2nd respondent

6. K.Mani
7. T.Venkatachalam ..Respondents 6 and 7/3rd and 4th respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 24.04.2012 passed in M.C.O.P.No.131 of 2011 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Vaniyambadi

For appellant : Mr.J.Chandran

For respondents : Mr.Kannankumar (R1-4)
Mr.M.Krishnamoorthy (R5)
R6 & R7 set exparte before the Tribunal below

JUDGEMENT

(Judgment of the court was delivered by R.SUDHAKAR,J.

Insurance Company has filed this appeal challenging the award dated 24.04.2012 passed in M.C.O.P.No.131 of 2011 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Vaniyambadi.

2. It is a case of fatal accident. The accident, in this case, happened on 23.07.2007. The deceased Nawaz said to be employed in Vaniyambadi Municipal Office, was proceeding towards Ambur from Vaniyambadi on National High way road, near Senglikuppam Village by riding the Bajaj Caliber Motor Bike Regn.No.TN23 AY 0172. At that time, the 4th respondent, who drove the lorry bearing Regn.No.TDZ 8886 in a rash and negligent manner, without any caution and without following the traffic rules, dashed against the Bajaj Caliber Motor Bike, as a result of which, the said Nawaz was thrown off and in that accident, he suffered fatal grievous multiple injuries and was taken to Ambur Government Hospital and then to C.M.C. Hospital, Vellore, where his position did not improve and finally he died on 25.07.2007. The wife and the three minor children have filed the claim petition claiming a sum of Rs.31,43,000/- as compensation stating that the deceased was earning a sum of Rs.8,903/- per month.

3. In support of the claim petition, the wife was examined as P.W.1 and one Syedirfhan was examined as P.W.2. Documents Exs.P1 to P21 were marked. The details of which are as follows:-

Ex.No.	Details
P1	Copy of the FIR
P2	Express report
P3	Postmortem report
P4	Salary certificate given by Vaniyambadi Corporation Commissioner

Ex.No.	Details
P5	Promotion certificate given by Vaniyambadi Corporation Commissioner
P6	Copy of the driving license of Nawaz
P7	Vehilce Inspection report
P8	Copy of the Insurance policy of the two wheeler
P9	Inspection report of the Lorry
P10	Copy of the driving licence of driver of the lorry
P11	Rent receipt of ambulance
P12	Admit card of CMC hospital
P13	Receipt for cash payment in CMC Hospital
P14	Receipt for cash payment in CMC Hospital
P15	Receipt for cash payment in CMC Hospital
P16	Receipt for cash payment in CMC Hospital
P17	Receipt for cash payment in CMC Hospital
P18	Receipt for cash payment in CMC Hospital
P19	Receipt for cash payment in CMC Hospital
P20	Wound certificate given by Ambar hospital
P21	Discharge chit given by CMC Hospital

The Officials of the Insurance Company were examined as D.Ws.1 & 2. and Exs.D1 to D5 were marked on behalf of the Insurance Company before the Tribunal, the details of which are as follows:-

Ex.No.	Details
D1	Copy of the insurance policy for lorry
D2	Copy of Enquiry report of the lorry
D3	Copy of death certificate of Nawaz
D4	Copy of employment attendance of Nawaz
D5	Letter in respect of amount to the wife of Nawaz

4. The Tribunal, based on oral and documentary evidence on record, held that the accident was due to the rash and negligent driving on the part of the lorry driver. The said finding is not seriously disputed by the learned counsel appearing for the appellant. No material is placed on behalf of the appellant to rebut the finding of negligence on the part of

the driver of the lorry and the liability fixed on the appellant/Insurance Company to compensate the claimants. Therefore, the said finding of the Tribunal stands confirmed.

5. As far as the quantum of compensation is concerned, the Tribunal granted the following amount as compensation with interest at the rate of 7% p.a.

Sl.No.	Head	Amount granted by the Tribunal
1	Loss of Income (8903+50%-1/4x12x14	Rs.16,82,730/-
2	Loss of Consortium	Rs. 25,000/-
3	Loss of love and affection	Rs. 30,000/-
4	Funeral expenses	Rs. 10,000/-
5	Ambulance Expenses	Rs. 3,500/-
6	Medical Bills as per Ex.P.13	Rs. 20,000/-
7	As per Ex.P.14	Rs. 10,000/-
8	As per Ex.P15	Rs. 750/-
9	As per Ex.P.16	Rs. 216.82
10	As per Ex.P.17	Rs. 96.25
11	As per Ex.P.18	Rs. 2,820/-
12	As per Ex.P.19	Rs. 1,190/-
	Total	Rs.17,86,303.07

Aggrieved over the said award, the Insurance Company has come before this Court.

6. The only contention now raised by the learned counsel for the appellant is that on the death of the deceased Nawaz, who was 43 years old, the Tribunal went wrong in taking the entire income of Rs.8,903/- without statutory deductions like Income Tax, professional tax etc. and by adding 50% towards future prospects, deducting 1/4th towards personal expenses and by adopting multiplier of 14, arrived at the loss of income as Rs.16,82,730/-, which is not justifiable.

7. On the contrary, the learned counsel for the respondents/claimants stated that by adopting the correct multiplier, the Tribunal has awarded compensation under the heading Loss of income and hence, the quantum of compensation need not be disturbed or reduced. He would further plead that compensation awarded under the heading "Loss of consortium" to the 1st respondent, being the wife of the deceased, aged 35 years at the time of accident is very meagre.

8. Learned counsel for the appellant pleaded that except the quantum of compensation granted for loss of income, all other amounts are not in dispute.

9. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

10. At this juncture, it is relevant to extract below para 11 of the judgment in the case of Sarla Verma - vs. - Delhi Transport Corporation reported in 2009 ACJ 1299 (SC):

> "(11) In Susamma Thomas, 1994 ACJ 1 (SC), this court increased the income by nearly 100 per cent in Sarla Dixit, 1996 ACJ 581 (SC), the income was increased only by 50 per cent and in Arati Bezbaruah, 2003 ACJ 680 (SC), the income was increased by a mere 7 per cent. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50 per cent of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax'.] The addition should be only 30 per cent if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

11. In view of the decision of the Hon'ble Supreme Court, we are of the view that by taking the income of the deceased at Rs.8,903/- p.m., after deducting 1/4th towards personal expenses and by adding 30% towards future prospects and by adopting multiplier 13, if the loss of income of the deceased is calculated, that would meet the ends of justice.

12. Since the dependants are wife and three minor children, we are inclined to increase the loss of consortium to the widow from Rs.25,000/- to Rs.50,000/-. The compensation granted at Rs.10,000/- each towards loss of love and affection to the 3 minor children is very meagre and the same is increased to Rs.20,000/- each.

13. Accordingly, the award of the Tribunal is modified as under:-

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of Income (8903+30%-1/4x12x13	Rs.16,82,730/-	Rs.13,54,080/-
2	Loss of Consortium	Rs. 25,000/-	Rs. 50,000/-
3	Loss of love and affection	Rs. 30,000/-	Rs. 60,000/-
4	Funeral expenses	Rs. 10,000/-	Rs. 10,000/-
5	Ambulance Expenses	Rs. 3,500/-	Rs. 3,500/-
6	Medical Bills As per Ex.P.13	Rs. 20,000/-	Rs. 20,000/-
7	As per Ex.P.14	Rs. 10,000/-	Rs. 10,000/-
7	As per Ex.P15	Rs. 750/-	Rs. 750/-
8	As per Ex.P.16	Rs. 216.82	Rs. 216.82
9	As per Ex.P.17	Rs. 96.25	Rs. 96.25
10	As per Ex.P.18	Rs. 2,820/-	Rs. 2,820/-
11	As per Ex.P.19	Rs. 1,190/-	Rs. 1,190/-
	Total	Rs17,86,303.07	Rs15,12,653.07 rounded off to Rs.15,12,600/-

14. There is no serious objection with respect to the interest granted at 7.5% per annum and the same is confirmed.

15. In the result, the Civil Miscellaneous Appeal is partly allowed in the following terms:-

(i) The award of the Tribunal is reduced to Rs.15,12,600/- from Rs.17,86,303.07.

(ii) The interest granted at 7.5% is confirmed.

(iii) The claimants are entitled to share the compensation amount awarded by this Court as apportioned by the Tribunal.

(iv) The appellant is directed to deposit the entire award amount as ordered by this Court, after deducting the amount already deposited if any, to the credit of M.C.O.P.No.131 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Vaniyambadi, Vellore District, within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit, the major claimant is permitted to withdraw her share amount as apportioned by the Tribunal by filing necessary application before the Tribunal.

(vi) As far as the share amount of the minors are concerned, the entire share amount of the minors shall be deposited in any one of the nationalized banks in reinvestment scheme till they attain majority and the 1st claimant is entitled to withdraw the interest accrued therein once in three months, directly from the bank and for the said purpose the first claimant shall open a savings bank account on the same branch and the interest amount shall be transferred to the account to be maintained by the mother.

(vii) The nationalised bank to which the amount will be deposited, shall intimate to the first claimant of such deposit and confirm the same to the Tribunal that the first claimant has been duly informed. The Tribunal to inform the bank accordingly.

(viii) The excess Court fee paid is directed to be refunded as per rule.

There will be no order as to costs in this appeal. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Subordinate Judge,
(Motor Accidents Claims Tribunal)
Vaniyambadi, Vellore District.

+1 cc to Mr.M.Krishnamoorthy Advocate sr.12342
+1 cc to M/s.N.Selvam Advocate sr.11955

C.M.A.No.1779 of 2014
25.02.2016

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